UNITED STATES PATENT AND TRADEMARK OFFICE

Paper No.

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JUN 1 5 2007

OFFICE OF PETITIONS

In re Application of   :
Montierth et al.   :   DECISION ON REQUEST
Application No. 09/903,201   :   FOR RECONSIDERATION OF
Filed: July 10, 2001   :   PATENT TERM ADJUSTMENT
Atty Docket No.   :
MP1105(13036/105   :
                              :

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed 8 March, 2007. Pursuant to patentee's duty of good faith and candor to the Office, patentee requests that the Office review the determination of patent term adjustment of 1084 days.

The request for review of the determination of patent term adjustment (PTA) is **granted**.

On 4 December, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. §154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one thousand eighty-four (1084) days. Patentees filed the instant letter on 8 March, 2007.

A review of the record reveals that the determination of patent term adjustment was correct. The Office determined a patent term adjustment of one thousand eighty-four (1084) days based on

an adjustment for PTO delay of seven hundred seventy-one (771) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), eleven (11) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. §1.703(a)(2), and three hundred two (302) days pursuant to 35 U.S.C. 154(b)(1)(B)(ii) and 37 C.F.R. §1.703(b)(4), reduced by no (0) days of applicant delay.

Further to this point, with regard to the 302 days of delay pursuant to 35 U.S.C. 154(b)(1)(B)(ii) and 37 C.F.R. §1.703(b)(4), applicants are reminded that the period of delay is the number of days, if any, in the period **beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed** under 35 U.S.C. 134 and §1.191 and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences. See 37 C.F.R. §1.703(b)(4) (emphasis added).

As stated in MPEP 2731, when a period is indicated (in 37 CFR 1.703 or 1.704) as "beginning" on a particular day, that day is included in the period, in that such day is "day one" of the period and not "day zero." For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length.
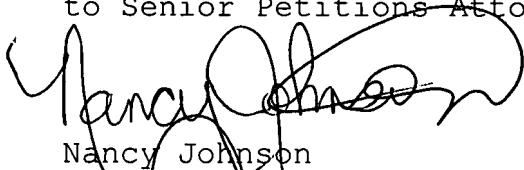
As such, the period of delay includes the date that the notice of appeal is filed. Therefore, the delay pursuant to 35 U.S.C. 154(b)(1)(B)(ii) and 37 C.F.R. §1.703(b)(4) was correctly calculated from 31 August, 2005, the date the notice of appeal was filed until 28 June, 2006, the date the Board of Patent Appeals and Interferences decision reversing the examiner was mailed.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **one thousand eighty-four (1084) days** (1084 days of PTO delay (771+11+302), reduced by 0 days of Applicant delay). To the extent that applicants are aware of any specific error in the PTA calculation, applicants should so advise the Office.

As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the $200.00 application fee under 37 CFR 1.705(b). The Office thanks applicant for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Publishing Division for processing into patent.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions